

If OPEC really wants to achieve equal competitiveness among all OPEC crudes, it must evolve a flexible, comprehensive and coherent pricing structure. The objective must be to organize a price structure in which the interlocking elements support rather than undermine and compete with each other.

The weakest part of the deal is the new pricing system, which is confusing, incomplete, too rigid and out-of-date. The production plan has been improved, but the pricing provisions are undermining it.

OPEC must soon devise flexible and up-to-date defense techniques to react quickly to changing market developments. In this respect, priority should be given to enforcing quota discipline through adequate monitoring and an improved price outlook and by means of a "safety net." Finally, as the market is so heavily influenced today by rumors, speculation and paper barrels, OPEC must not shy away from publishing regularly its monthly production figures. A good production record kept secretly can sometimes do more harm than a published poorer record.

REGIONAL

Contractors' Claims Under The FIDIC International Civil Engineering Contract—IV

by Christopher R. Seppala, Esq.

This is the final article in Christopher Seppala's series on contractors' claims under the FIDIC International Civil Engineering Contract. Previous articles appeared in the February issue at page 8, the March issue at page 17, and the April issue at page 8.

The FIDIC International Civil Engineering Contract (FIDIC Conditions) confers important claim rights on the Contractor. As noted in earlier articles, the Contractor must be familiar with the contractual circumstances under which he may assert a claim and with the contractual procedures to be observed for getting it paid. Previous articles in this series examined the Contractor's major claim areas and other claims under the FIDIC Conditions. This article covers claim notification procedure and disputes. The conclusion includes a brief discussion of the importance of establishing appropriate procedures within the Contractor's own organization.

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V. Claim Notification Procedure And Disputes

(A) Claim Notices

In addition to any notice of claim that the Contractor may be obliged to give by virtue of an individual contract clause, he must also, under Clause 52(5), send to the Engineer's Representative a monthly account "giving particulars, as full and detailed as possible," of all claims to which he may consider himself entitled. If he fails to do so, he risks seeing his claim barred. Clause 52(5) specifies, as a general rule, that:

No final or interim claim for payment . . . will be considered which has not been included in such particulars

The prompt notification of claims serves several objectives. It allows the Engineer to investigate the facts of a claim and its financial consequences while the evidence is still fresh and available. It allows the Employer prompt notice of possible adjustments to the contract price. Finally, it allows potential dispute situations to be resolved quickly.

Any claim the Contractor may have against the Employer should be made to the Engineer by the end of the Period of Maintenance, which is ordinarily a period of one year after completion of the works. If any claim has not been notified to the Engineer by the date for the giving of the Maintenance Certificate, which occurs at the end of the Period of Maintenance, then it will ordinarily be time-barred under Clause 62(2), which provides:

The Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Works, unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Maintenance Certificate under this Clause.

The only claims that may be notified after the giving of the Maintenance Certificate would appear to be claims that, as a practical matter, could not be asserted until after that date,⁶⁹ e.g., claims arising out of the preparation of the statement of final account, which the Contractor is required to submit to the Engineer following issuance of the Maintenance Certificate.⁷⁰ They may also include indemnification obligations of the Employer, e.g., if the Employer has agreed to indemnify the Contractor for local income taxes, his indemnification obligation will be determined only after the Contractor has been finally assessed by the local tax authorities, which may be several years after completion and maintenance of the works.

(B) Disputes

If the Contractor disagrees with the Engineer's disposition of a claim, then the Contractor may consider that there exists a "dispute" with the Employer or the Engineer. In this event, the procedure laid down under Clause 67 becomes applicable.⁷¹ Very briefly, under this procedure, the Contractor is obliged to resubmit the matter to the Engineer for a decision and, if the Contractor is dissatisfied with such decision (or the Engineer fails to render a decision within 90 days), the Contractor may then refer the matter to arbitration. The FIDIC Conditions provide for arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

As the wording of Clause 67 is particularly abstruse, any Contractor proposing to invoke its provisions would be

well advised to do so only after seeking expert legal advice.⁷²

VI. Conclusion

If the Contractor is to be successful in recovering on his claims, he must know the FIDIC Conditions and his claim rights thereunder. He must also establish appropriate procedures within his own organization to ensure that:

- claim situations are promptly identified when they arise,
- the necessary notices and documents are addressed to the Engineer in the appropriate form and within the required time limits, and
- all the other appropriate measures are taken to secure and advance his rights.

These measures require, among other things, the organization of a staff experienced in claim procedures and the constitution of files in which relevant correspondence, documents and financial data are properly classified and maintained. The importance of conserving proper records (correspondence, site reports, minutes of site meetings, drawings, etc. . . .) cannot be emphasized too strongly, as a prudent Contractor should always be preparing for the

eventuality that he may have to arbitrate a claim, and his chances of succeeding in such an endeavor will depend, to a very high degree, upon his ability to produce, when required, the records necessary to support it.

Knowledge of his rights under the FIDIC Conditions and the institution of such internal procedures within his own organization are essential if the Contractor is to recover the complements to the contract price to which he is entitled.

Footnotes

(Editor's Note: Footnotes are numbered consecutively throughout this series of articles.)

⁶⁶Clause 62(3).

⁷⁰See Clause 60 in Part II of the FIDIC Conditions

⁷¹If the Contractor disagrees with a decision of the Engineer's Representative, rather than with the Engineer, he must refer the matter to the Engineer, who must then confirm, reject, or modify such decision. See Clause 2 (2)(b). If the Contractor disagrees with a decision of the Engineer, this would ordinarily constitute a "dispute," which he may then refer back to the Engineer for a decision under Clause 67.

⁷²With respect to Clause 67, see the commentary in the French language on the partial award rendered under the auspices of the International Chamber of Commerce in Case No. 3790, 1983 *Journal du Droit International* 910, reprinted in 11 C.L.R. 372 (1984) (English language version).

IRAN

The Islamicization Of Iran's Banking System

by Shirin O. Entezari, Esq.

The Islamic Republic of Iran has since 1983 been taking steps to completely transform its banking system from one based on Western banking principles to an interest-free Islamic system. Banks in Iran are now authorized to provide financing only on the basis of sharing the risk as well as the profit with the borrower. This is a fundamental principle of Islamic banking.

The government made its first legislative attempt to restrict the payment of interest on bank loans in June 1979, with the Act of Nationalization of Banks.¹ That Act provided that "considering . . . the need to orientate the operation of banks towards Islamic administration and productivity, all banks shall be nationalized . . ."

In 1983, the Iranian Majles enacted and the Council of Guardians approved the Act for Interest-Free Banking (the 1983 Act). The 1983 Act sets forth two major banking policies:

- Prohibition of the payment of interest by banks; and
- Establishment of the Islamic legal framework for the use of capital.

Interest-Free Deposits

According to the Act of 1983, Iranian banks are authorized to accept deposits in two categories:

Gharz ol-Hasaneh Deposits (checking and savings de-

posits). Depositors may use checks to order withdrawal of money from their accounts. No interest is paid on *Gharz ol-Hasaneh* accounts, but in order to encourage such deposits, banks are authorized to reward depositors through, for example, non-fixed bonuses in cash or in kind or exemption from the payment of commission fees.

Term Investment Deposits (such as long- and short-term investments). Depositors invest their funds in various economic activities and become the direct recipients of the resulting profits without risk. The profits from these transactions are shared between the bank and the depositor, in accordance with the terms of a contract concluded at the time of the investment, with consideration given to the amount and duration of the investment. Profits earned as a result of the bank's investment of such funds are divided among the depositors after deduction of the bank's fees for acting as agent. The bank, even though it acts only as the depositors' agent, guarantees the return of the principal amount of the deposit. The minimum amount for short-term deposits (three months) is IR 2,000; for long-term deposits (one year or more), IR 50,000.²

Islamic Contracts

The types of Islamic contracts used by Iranian banks include:

- *Mozarebeh* (limited partnership): Under a *Mozarebeh* contract the bank undertakes to provide capital to a party who uses it for commercial purposes. Any profit is divided between the parties on a basis agreed to at the outset of the contract term.

- *Mozare'eh* (agricultural leasing): Under this contract the bank provides land for a specific period for farming by the other party. The profit from the harvest is then divided between them.

- *Civil Partnership*: Several real or legal persons contribute cash or non-cash assets on a common and undivided basis, with a view to profit, according to the contractual

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